

From: Brad Paton
To: Microsoft ATR
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Subject: MS Settlement

To whom it may concern:

I just wanted to register my opinions on the Justice Department's proposed settlement with Microsoft.

First, given the fact that the primary objection the Appeals Court had with Judge Jackson's verdict on the case was his penalties, not with his legal rulings that Microsoft was both a monopolist, and one that abused its monopoly power to expand to other fields. To quote from the Friday Wall Street Journal covering David James's defense of the settlement:

"Mr. James said the Microsoft settlement reflects changes in the software industry since the Justice Department sued Microsoft in 1998. While the case began as the result of the so-called browser wars between Netscape and Microsoft's Internet Explorer, Microsoft has won that war, Mr. James said."

This means that he acknowledges in public that Microsoft used their monopoly leverage to successfully defeat Netscape in the so-called browser wars. But according to everything I have read about traditional anti-trust resolutions is that the two primary things a settlement is supposed to achieve are: 1) a guarantee that the monopolist is unable to repeat it's illegal expansion into other fields, and 2) deny them the fruits of their original illegal expansion.

Addressing the first contention and how it relates to the proposed settlement, I don't know how given both the history of Microsoft's behavior in the prior consent decree, and the fact that even though it was found guilty of illegal behavior the company maintains that it has done nothing wrong (if you can find one instance in the public record of any Microsoft executive from Bill Gates on down contradicting this, you are much better detectives than any of the many journalists covering the case), I don't see how basically telling the company, "Now don't do it again." is going to be effective.

Essentially, Mr. James has acted as though he not only disagreed with the court findings, but would never have filed the case to begin with, despite supposedly winning it!

To the second concept above, there are no penalties anywhere in this settlement that even pretend to address this. There isn't even a

financial penalty, despite the fact that Microsoft took one of the most dynamic companies in the US technology industry, Netscape, and basically eviscerated it so much that it wound up being swallowed whole by media companies, to whom they are basically a technology adjunct. Could you imagine the same thing ever happening to Microsoft? Do you think there weren't significant job losses at Netscape? Why is Microsoft considered the only "innovative" company worthy of being let do whatever they want, simply because they are so dominant that anything done to hurt them is seen as hurting the American economy, rather than the harm that they have done in the inverse?

There are some who say that Microsoft has "innovated" so much that they are the sole reason the PC industry is where it is today. Exactly where is the PC industry today? True, the costs of equipment have roughly stayed constant, and today's machines are much more powerful than they used to be, but that is hardware advances, an area that Microsoft doesn't operate in! In the area of software, our desktop computers still routinely crash every bit as frequently as they used to. Software programs that were miles better than anything that could be done in the analog world, word processing for example, used to fit on a single density floppy disk (remember those?). Now they take up over 100 megabytes of hard drive space (roughly 200 times as large), still mostly do the same things, require 40 times as much system memory, and still crash (usually by running out of memory, a problem almost always caused by either faulty coding in the software, or the operating system). Take a document that you wrote on an early PC, say 10 years ago, open it in Microsoft's Word 2001 (or XP), save it in the native format, and compare the file sizes. You haven't done anything to it, and it now takes up over 4 times as much space!

Imagine what would have happened to American industry if Microsoft server's powered the financial industry instead of IBM's mainframes. These mainframes have been operating relatively fault-free for over 20 years! Microsoft upgrades everything within a year or two, always promising that this time they've gotten it right, yet they still can't even approach that level of reliability. If anything, the standards of software reliability that Microsoft has been a prime mover for getting the American public to accept has probably impeded the progress of American technology more than any other single factor. They have gotten away with practicing via coding the exact same sorts of sophistry that all the dot-com companies that crashed in the past couple of years were doing, only the investment public isn't nearly so permissive what you do with their money as what you do with their computers (and time).

I know the general state of the software industry is not within the purview of this case, but not significantly penalizing Microsoft for

it's rapacious behavior in the past not only encourages it, but also sends a message to the rest of the industry that such behavior is not only permitted, but encouraged.

Sincerely,

Brad Paton